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MCI contends that the only way BellSouth can measure unbundled local transport on a usage sensitive basis is to provision the unbundled local transport in conjunction with the port. In this scenario, BellSouth has to provide common transport in combination with switching. Further, MCI asserts that BellSouth does not offer the trunk side local switching element, hence BellSouth is offering common transport; since the trunk side local switch connects the common transport element to the switch.

Finally, AT&T contends that BellSouth has not put in place the necessary protocols to ensure that common transport can be provided and billed on nondiscriminatory basis. AT&T argues that it has not received the shared transport it ordered, since BellSouth has not billed for this usage sensitive element. Hence, BellSouth has not provisioned local transport.

The Commission in Order No. PSC-96-1579-FOF-TP, required that BellSouth provide telecommunications services to ALECs at the same quality as it provides to itself and to provide the ALECs CABS formatted billing.

#### RECOMMENDATION

Based on the evidence in the record that BellSouth cannot bill for usage sensitive UNEs, staff believes that BellSouth does not meet this checklist item. Also, BellSouth has not provided usage related bills to any of the ALECs to prove its case. This Commission has established that usage sensitive UNEs will be billed via CABS or that those bills will be CABS-formatted. Staff would note that BellSouth has not complied with either. Staff is therefore unable to determine if BellSouth has unbundled local transport from other services. Hence, BellSouth is not with compliance of with checklist item v. (Order, 96)

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ISSUE 7: Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC? (Audu)

RECOMMENDATION: No. Based on the evidence in the record, BellSouth has not provisioned all of the unbundled local switching requested by the ALECs. BellSouth has experienced significant billing related problems in the provisioning of these unbundled local switching.

POSITION OF THE PARTIES

ACSI: No.

AT&T: No, BellSouth cannot provide local switching on a bundled or unbundled basis because it has not demonstrated that it can provide usage detail or billing information for such access--information which is an essential component of local switching under 47 U.S.C. 153(45). Because this billing recording capability is a feature of the switch under the Act's definition of a network element, BellSouth must provide it at the cost arbitrated for a switch. See 45 U.S.C. section 153(29).

BST: Yes. Unbundled local switching is functionally available from BellSouth. BellSouth has a technical service description and has procedures in place for the ordering, provisioning, and maintenance of its switched services. As of June 1, 1997, BellSouth has seven unbundled switch ports in service in Florida.

FCCA: No. BellSouth is not providing all the functionalities of local switching, including the ability to provide bill detail for local usage and access billing.

FCTA: No position.

ICI: No. BellSouth has not provided Intermedia with access to UNES and, as a result, BellSouth has not provided Intermedia with local switching unbundled from transport, local loop transmission, or other services consistent with Section 271(c)(2)(B)(vi).

MCI: No. BellSouth is not actually providing unbundled local switching. BellSouth's current OSS do not support unbundled local switching for competitors on a parity with BellSouth. Further, BellSouth is unwilling and unable to provide usage data associated with unbundled switching.

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MFS/WorldCom: No. BellSouth has not yet provided unbundled local loop transmission as required by the Act and applicable rules.

Sprint: No. Local switching routes exchange service and exchange access traffic. Prices should be cost-based. There should be no restrictions on how local switching can be used. BellSouth has failed to meet the requirements of this provision of the checklist.

TCG: No. BellSouth has not met its burden of affirmatively demonstrating that it has provided unbundled local switching from transport, local loop transmission, or other services, pursuant to Section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC.

STAFF ANALYSIS:

INTERPRETATION OF THE ACT'S REQUIREMENTS

SECTION 271 REQUIREMENTS

Section 271 and Section 251 of the Telecommunications Act of 1996 require that BOCs provide unbundled network elements to all requesting, competing carriers, and that these network elements, as well as the accompanying access, shall be provided on a nondiscriminatory basis. The Act addressed unbundled local switching as an unbundled network element, hence, the Act's requirements that pertain to this checklist item will be addressed in Issue 5.

FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

The FCC First Report and Order, the Ameritech Order and the FCC Rules which implement the Act, provide guidance to the requirements of unbundled network elements. Unbundled local switching is addressed as an unbundled network element, therefore staff will address the FCC interpretation of Section 271 as it pertains to unbundled local transport in Issue 5.

FPSC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

In Order No. PSC-96-1579-FOF-TP, the Commission ordered BellSouth to provide local switching as an unbundled network element. In addition, the Commission ordered BellSouth to provide customized routing for requesting ALECs using line class codes. (Order No. PSC-96-1579-FOF-TP, p.70) Also, the Commission determined that BellSouth should provide telecommunications services for UNEs at the same level of quality that it provides

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to itself and its affiliates. (Order No. PSC-96-1579-FOF-TP, p.74) In addition, the Commission required BellSouth to provide CABS-formatted billing for both resale services and UNEs, since this will provide the ALECs bills in a familiar format. (Order No. PSC-96-1579-FOF-TP, p.96) In making this determination, the Commission agreed with the Act's nondiscriminatory requirement.

#### **SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE**

Since this checklist item calls for the unbundling of the local switch from local transport and other services, staff will focus on BellSouth's ability to provision local switching as a distinct entity. One of the ways to make this determination is through BellSouth's ability to provision and bill for local switching as a separate unbundled network element. While local switching may not generally be ordered individually, for the purpose of this checklist item staff will evaluate such orders as though unbundled local switching were ordered singularly.

#### **STAFF DISCUSSION OF POSITIONS**

Checklist item vi requires BellSouth to unbundle local switching from local transport, local loop transmission, or other services. This checklist item does not seek to determine whether BellSouth provides nondiscriminatory access to the unbundled local switch; instead it seeks to determine whether BellSouth provisions local switching that is unbundled from the local loop, local transport, or other services. BellSouth testifies that it has provisioned unbundled switched ports to all requesting carriers. In order to determine whether BellSouth has provisioned local switching unbundled from the local loop, local transport, or other services, it is necessary for BellSouth to provide documentation demonstrating that BellSouth provisions and bills for unbundled local switching as a separate unbundled network element.

The FCC defines local switching as encompassing line-side and trunk-side facilities plus the features, functions, and capabilities of the switch. The line-side facilities include the connection between a loop termination (e.g the main distribution frame) and the switch line card. The trunk-side facilities include the connection between trunk termination at a trunk-side cross connect panel and a trunk card. The features, functions, and capabilities include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks; this also includes basic capabilities that are available to the ILEC's customers such as telephone numbers, directory listings, dial tone, signaling, and access to 911,

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operator services, and directory assistance. Also, the local switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex. (EXH 1, FCC 96-325, ¶412)

#### WHAT HAS BEEN REQUESTED

In its discovery response, AT&T asserts that it has ordered for local and tandem switching for its Concept Testing. AT&T asserts that the requested switching elements are intended for testing and not commercial usage. (EXH 95) Also, Intermedia asserts that while it has not requested any switching element, it has initiated discussions with BellSouth for local switching. (EXH 79) Finally, MCI states that it has requested an unbundled port with Caller ID Block and other vertical services. (EXH 111)

#### WHAT HAS BELL SOUTH PROVIDED

From the evidence BellSouth presented, it is unclear what items have been ordered, what BellSouth has provisioned and to whom. Thus, staff is relying strictly on the intervenors' discovery to ascertain what local switching elements have been requested. Therefore, staff cannot validate the total number of local switching elements that have been requested, what switching elements BellSouth has provisioned and to whom. Staff notes that BellSouth did indicate at the hearing that it was waiting until September 1997 for usage data to prepare billing and performance reports for AT&T and other ALECs in Florida. (TR 849; EXH 52, p.12) Therefore, it is possible that there might be other ALECs that requested unbundled local switching besides AT&T.

BellSouth's witness Milner asserts that BellSouth has provisioned seven unbundled switched ports in Florida to requesting ALECs. BellSouth's witness contends that with the exception of the wiring of the loop to the port in the central office, BellSouth's unbundled local switching is virtually identical to BellSouth's existing retail services. Witness Milner testifies that BellSouth offers a variety of switching ports and associated usage unbundled from transport, local loop transmission and other services. BellSouth asserts that additional port types are available through the Bona Fide Request process. (Scheye TR 511, 433-434; Milner TR 781-782)

AT&T's witness Hamman argues that BellSouth has not provided access to all of the features in the switch. AT&T asserts that an ALEC must be able to utilize the full capacity of the switch just as BellSouth does. Witness Hamman contends that while AT&T has ordered four switching ports as part of the platform in its

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concept testing, BellSouth has not yet provided them. AT&T's witness argues that to demonstrate compliance with this checklist item, BellSouth must provide the full capabilities of the switch to give ALECs the ability to activate and change features, and define the translations for its customers. Further, AT&T argues that BellSouth must provide usage billing with carrier identification codes and the billing of access charges. (TR 2667) Witness Hamman concludes that for AT&T to ascertain that BellSouth has provisioned the ordered concept testing platforms, BellSouth must properly provide and bill for these orders, and provide the methods and procedures for billing. (TR 2667)

MCI's witness Martinez contends that there are two sides to the switch, the port (line) side and the trunk side. He argues that BellSouth has offered trunk side switching in conjunction with common transport in its SGAT. Witness Martinez asserts that BellSouth has therefore not unbundled local switching such that both line side and trunk side switching are offered separately in compliance with the Act. (TR 3290)

FCCA's witness Gillan contends that the key to robust competition in the local market lies in the local switch element. He contends that the switch lies at the center of local exchange service. Witness Gillan further contends that it is at the local switch where services and revenues are created and generated respectively. Thus, the speed and efficiency of market entry will be directly related to the number of carriers utilizing BellSouth's existing switches. (TR 1779) Witness Gillan asserts that the Act requires that BellSouth offers the local switch element as a generic functionality that can be used by competing carriers without the burden of obtaining requisite services. (TR 1780)

FCCA's witness Gillan argues that sustainable ALEC market entry requires more than the mere unbundling of the local switch, but instead, the availability of the logical combinations of network elements. He argues that since there are practically no alternative exchange networks in existence, the competing carriers will have to get their network elements (such as combined loop and switch) from BellSouth. Witness Gillan refers to this combination of network elements as a "platform configuration." (TR 1784)

BellSouth's witness Milner argues that pending a long term solution, BellSouth will provide selective routing to any ALEC's desired platform using class codes, subject to availability in accordance to Orders in Docket Nos. 960833/846/916. (Scheye TR 433-434; Milner TR 781-782) Witness Milner asserts that selective

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routing will be used to direct calls from the unbundled switch to an ALEC's designated operator service. (Scheye TR 432) The witness contends that BellSouth would provide selective routing in Florida upon request. (Milner TR 718) BellSouth asserts that the rate for selective routing is based on the rates set by the Commission in the BellSouth/AT&T Interconnection Agreement. He argues that this particular rate includes vertical services. (Scheye TR 433) However, AT&T's witness Hamman argues that while AT&T has requested direct routing in Georgia, AT&T has not requested the use of selective routing in Florida. (Hamman TR 2666-2667; 2752-2755)

AT&T's witness Hamman contends that BellSouth has denied AT&T direct routing to AT&T's operator and directory services. The witness further argues that BellSouth has not provided direct routing using either Line Class Codes or Advanced Intelligent Network. (Hamman TR 2666) AT&T argues that customized routing is an FCC requirement. (EXH 1, FCC 96-325 ¶536) Witness Hamman further argues that while its agreement in Georgia provides for direct routing, that BellSouth contends that it will consider AT&T's request for code conversion via the Bona Fide Request process, despite the fact that BellSouth admitted that code conversion is technically feasible. (Hamman TR 2666; 2752)

BellSouth's witness Milner further asserts that BellSouth's unbundled local switching includes a monthly port charge and usage. In addition, he asserts that the monthly charges can be system generated. However, witness Milner contends that BellSouth will either render a manually calculated bill or retain the usage until a system generated bill is available, depending on what the ALEC elects. (Milner TR 782) BellSouth's witness Milner asserts that by late September 1997, BellSouth will be in a position to generate an electronic or mechanized usage bill. At the hearing, BellSouth's witness Scheye asserts that BellSouth is capable of providing electronic usage billing, although a bill has not yet been rendered. (Milner TR 851; Scheye TR 1709-1711) Witness Milner concedes that BellSouth cannot electronically bill for two UNEs that have usage sensitive elements. (Milner TR 845)

AT&T's Witness Hamman argues that the local switch is the "brain" of the network since it provides the needed information that a carrier uses to bill customers for usage and other carriers for access to the customers. (TR 2664-2665) In addition, AT&T's witness Hamman asserts that since October 1996, AT&T has been requesting usage sensitive billing information to no avail. Witness Hamman contends that BellSouth itself uses the same usage data to bill for access. (TR 2711)

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Staff does not believe that BellSouth has demonstrated in full that unbundled local switching is virtually identical to BellSouth's retail services. BellSouth has not spelled out what retail services BellSouth is alluding to in this instance. The record is unclear to whom BellSouth has actually provided unbundled local switching. While AT&T affirms that it requested local switching elements for its concept testing, AT&T asserts that it cannot ascertain that BellSouth has provisioned these as requested, because BellSouth has not billed for the associated usage. Since local switching is usage sensitive, BellSouth's witness Milner concedes that BellSouth is currently unable to bill for two usage sensitive UNEs. Staff agrees with AT&T that verification of actual provisioning shall be predicated on the ILEC's ability to bill for the requested unbundled network element as the ALEC requested.

Staff also agrees with MCI that per BellSouth's SGAT, BellSouth only offers trunk side switching. BellSouth is silent about the line-side switching in its SGAT, therefore it is logical to imply that BellSouth does not intend to offer the trunk-side switching. (TR 3291) Staff agrees with FCCA's witness Gillan that unbundled local switching is a generic functionality that an ALEC can combine as it sees fit. However, staff cannot disprove or support FCCA's and AT&T's assertions regarding the platform concept.

Staff agrees with both AT&T and BellSouth that this Commission and the FCC requires BellSouth to provide direct routing to requesting ALECs. Staff however, notes that this Commission has not decided on code conversions. It appears that BellSouth is correct in considering AT&T's request using the Bona Fide Request process (BFR).

Staff is confused regarding BellSouth's ability to bill for unbundled local switching. BellSouth's witnesses Milner and Scheye of initially testified that BellSouth cannot bill for usage sensitive elements and cannot provide for daily usage files, but later in the hearing, witness Scheye changed his testimony saying that BellSouth has acquired the capability to render bills. Staff, however, notes that staff cannot rely on witness Scheye's later testimony since BellSouth did not provide a copy of a bill in support of its position.

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#### SUMMARY

BellSouth contends that except for the wiring of the loop to the port in the central office, unbundled local switching is virtually identical to BellSouth's existing retail services. Also, BellSouth contends that it provides selective routing to any ALEC's desired platform using class codes, and that BellSouth would provide selective routing in Florida upon request. In addition, BellSouth contends that it will be in a position to generate an electronic or mechanized usage bill in late September 1997. However, one of BellSouth witnesses confirmed that BellSouth cannot electronically bill for two UNEs that have usage sensitive elements.

AT&T however, argues that BellSouth must properly provide and bill for UNEs, and provide the methods and procedures for billing in order to comply with this checklist item. Also, MCI contends that BellSouth is offering trunk-side switching in conjunction with common transport, thus, BellSouth has not unbundled the local switching element.

FCCA contends that the switch lies at the center of local exchange service, thus, the speed and efficiency of market entry will be equivalent to the number of carriers able to utilize BellSouth switches.

#### RECOMMENDATION

Based on the record, BellSouth has some necessary processes to correct in order to comply with this checklist item. Staff believes that the unbundled local switching element may well determine the rate at which the local market is opened up for sustainable competition. While BellSouth appears to provide direct routing to ALECs, BellSouth's inability to provide CABS or CABS-formatted billing as ordered by this Commission does not provide the ALECs reasonable opportunity to compete. Staff believes that BellSouth provides daily usage data to itself. To ensure compliance with the Act's requirements, the ALECs must be provided the same data and in the same time frames as ILEC. Staff believes that local switching comprises both the line and trunk sides capabilities, to offer one and not the other restricts the ALECs ability to fully participate in the local market. The Act does not state that some parts of the local switch shall be unbundled, but instead, it states that the whole local switch must be unbundled. Therefore, it is incumbent on BellSouth to make all components of the local switch available to any requesting ALEC and on an unbundled basis. Based on the

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record, staff is unable to affirmatively conclude that BellSouth is provisioning unbundled local switching in compliance with checklist item vi. Thus, staff concludes that BellSouth has not met the requirements of checklist vi.

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ISSUE 8: Has BellSouth provided nondiscriminatory access to the following, pursuant to section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC? (Greer)

- (a) 911 and E911 services;
- (b) directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and,
- (c) operator call completion services?

RECOMMENDATION: No. BellSouth has not provided nondiscriminatory access to directory assistance to allow the other telecommunications carrier's customers to obtain telephone numbers.

POSITION OF THE PARTIES

ACSI: No. BellSouth has failed to demonstrate compliance with this checklist item.

AT&T:

(a): BellSouth has not provided such access to AT&T.

(b): No. Although nondiscriminatory access is technically feasible and can be provided by direct routing from the switch or other means, BellSouth continues to brand these services as its own even for AT&T customers.

(c): No. Although nondiscriminatory access is technically feasible and can be provided by direct routing from the switch or other means, BellSouth continues to brand these services as its own even for AT&T customers.

BST:

(a) Yes. BellSouth's statement offers local exchange providers nondiscriminatory access to 911 and E911 service. BellSouth has had procedures in place since early 1996 by which ALECs can connect their switches to BellSouth E911 tandems. As of June 1, 1997, BellSouth had 88 trunks in service connecting ALECs with BellSouth E911 arrangements in Florida.

(b) Yes. Nondiscriminatory access to directory assistance (DA services) is functionally available from BellSouth. As of June 1,

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1997, there were 156 directory assistance trunks in place serving ALECs in Florida.

(c) Yes. Operator call processing is functionally available from BellSouth, which allows ALECs to obtain both live operator and mechanized functionality. As of June 1, 1997, there were 31 such trunks in place serving ALECS in Florida.

FCCA: No. The testimony of individual carriers demonstrates that BellSouth has not actually provided these items in Florida as required by the Act and applicable rules.

FCTA: No. BellSouth has not met its burden of demonstrating compliance with the Act or FCC rules.

ICI: BellSouth has provided Intermedia with access to checklist item (vii) services but only to the extent limited local exchange service is being provided by Intermedia over Intermedia's local exchange facilities. To the extent that Intermedia has requested such access in association with requested UNEs, BellSouth has not provided nondiscriminatory access to such services. Intermedia does not know whether BellSouth will be able to provide access to such services in connection with requested UNEs.

MCI:

(a): No. BellSouth's current OSS do not support 911 and E911 for competitors on a parity with BellSouth.

(b): No. BellSouth's current OSS do not support directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers on a parity with BellSouth. In addition, BellSouth does not provide access to directory service listings in its database for independent telephone companies and ALECs.

(c) BellSouth has provided access to operator call completion services. However, since BellSouth has refused to provide MCI with unbundled switching it remains to be seen whether BellSouth is capable of providing such access via unbundled switching.

MFS/WorldCom:

(a): No, BellSouth has not yet provided nondiscriminatory access to 911 and E911 as required by the Act.

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(b): No, BellSouth has not yet provided nondiscriminatory access to directory assistance services as required by the Act due to its failure to properly brand calls.

(c): No, BellSouth has not yet provided nondiscriminatory access to operator call completion services as required by the Act due to its failure to properly brand calls.

Sprint: No. All telecommunications carriers should have access to incumbent LECs 911/E911, directory assistance, and operator call completion capabilities on the same terms and conditions as enjoyed by the ILEC. All telecommunications carriers should be allowed to have their telephone numbers included in directory assistance, line information database ("LIDB"), and other operator services at the same price, terms, and conditions as does the incumbent. Resale prices should include population of the databases and access to the services. Access to these databases should be nondiscriminatory. BellSouth has not complied with this provision of the checklist.

TCG:

(a): TCG takes no position on this issue. However, BellSouth has the burden to affirmatively demonstrate that it has provided nondiscriminatory access to 911 and E911 services pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC.

(b): TCG takes no position on this issue. However, BellSouth has the burden to affirmatively demonstrate that it has provided nondiscriminatory access to directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers in accordance with Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC.

(c): TCG takes no position on this issue. However, BellSouth has the burden to affirmatively demonstrate that it has provided nondiscriminatory access to operator call completion services pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC.

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STAFF ANALYSIS:

INTERPRETATION OF THE ACT'S REQUIREMENTS

SECTION 271 REQUIREMENTS

Section 271(c)(2)(B)(vii) requires BST to provide nondiscriminatory access to (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services.

FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

FCC's First Report and Order

The First Report and Order contains the FCC's initial rules designed to accomplish the first of the goals to open the local exchange and exchange access markets to competition. There are several items which are pertinent to Issue 8.

The FCC determined that customized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, must be provided to new entrants. However, the FCC also states "our requirement that incumbent LECs provide customized routing as part of the 'functionality' of the local switching element applies, by definition, only to those switches that are capable of performing customized routing." (EXH 1, FCC 96-325, ¶418)

The FCC also determined that the "directory assistance database must be unbundled for access by requesting carriers." (EXH 1, FCC 96-325, ¶538) The FCC further clarified that "such access must include both entry of the requesting carrier's customer information into the database, and the ability to read such a database, so as to enable requesting carriers to provide operator services and directory assistance concerning incumbent LEC customer information." (EXH 1, FCC 96-325, ¶538)

The FCC is required by § 251(d)(2)(A) to consider whether "access to such network elements as are proprietary in nature is necessary." In this regard, the FCC stated that:

Incumbent LECs generally did not claim a proprietary interest in their directory assistance databases. Many parties contend that proprietary interests leading to restrictions on use or

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sharing of such database information would injure their ability to compete effectively for local service. (EXH 1, FCC 96-325, ¶539)

Section 251(d)(2)(B) requires the Commission to consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." After stating that the parties identified access to operator call completion services and directory assistance as critical to the provision of local service, the FCC concluded "that competitors' ability to provide service would be significantly impaired if they did not have access to incumbent LECs' operator call completion services and directory assistance." (EXH 1, FCC 96-325, ¶540)

#### FCC's Second Report and Order

While the First Report and Order promulgates rules to eliminate legal and technical barriers to competition, the Second Report and Order promulgates rules to "implement the parts of § 251 that relate to the elimination of certain operational barriers to competition." (EXH 1, FCC 96-333, ¶2). As with the First Report and Order, there are several discussions and conclusions within the Second Report and Order that impact Issue 8.

The FCC uses the term "nondiscriminatory access" throughout the Order, and the FCC concluded that "'nondiscriminatory access,' as used in Section 251(b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC." (EXH 1, FCC 96-333, ¶101)

The FCC notes that while a LEC must permit a competitor nondiscriminatory access to directory assistance and directory listings, it also notes that the LEC is not responsible for ensuring that the competitor's customers are able to access these services. The FCC further states that "when a dispute arises as to the adequacy of the access received by the competitor's services, the burden is on the LEC permitting access to the service to demonstrate with specificity: (1) that it is permitting nondiscriminatory access to directory assistance and directory listings; and (2) that the disparity in access is not caused by factors within its control." (EXH 1, FCC 96-333, ¶134)

The FCC also concluded that "if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory

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basis, notwithstanding the identity of the customer's local service provider, or the identity of the telephone service provider for the customer whose directory listing is requested." (EXH 1, FCC 96-333, ¶135)

In the Second Report and Order, the FCC revisited the issue of "rebranding" in regards to directory assistance and concluded that "a providing LEC's failure to comply with the reasonable, technically feasible request of a competing provider for the providing LEC to rebrand directory assistance services in the competing provider's name, or to remove the providing LEC's brand name, creates a presumption that the providing LEC is unlawfully restricting access to these services by competing providers." (EXH 1, FCC 96-333, ¶148)

#### Ameritech Order

By Order 97-298, released August 19, 1997, the FCC denied Ameritech's application, filed May 21, 1997, pursuant to § 271 of the Telecommunications Act of 1996, to provide interLATA services in Michigan. In this Order, the FCC determined that Ameritech had failed to demonstrate that it had fully implemented, among other checklist items, access to its 911 and E911 services. The FCC also had some findings and conclusions in this Order regarding checklist items that were not the basis for rejecting the application.

The FCC stated that Ameritech must "do what is necessary to ensure that its 911 database is populated as accurately, and that errors are detected as quickly, for entries submitted by competing carriers as it is for its own entries." (EXH 1, FCC 97-298, ¶256-279)

In the Ameritech proceedings, MCI asserted that "because Ameritech does not provide unbundled directory assistance databases on an equal-in-quality basis, it is not in compliance with the checklist requirement of dialing parity." (EXH 1, FCC 97-298, ¶124) In response to this and other contentions, the FCC stated that "in light of our findings with respect to Ameritech's failure to satisfy other checklist requirements...we are not required to make, and we do not make, any findings or conclusions with respect to Ameritech's compliance with the foregoing checklist items." (EXH 1, FCC 97-298, ¶127)

In the Ameritech Order, the FCC did not comment on access to operator call completion services except to state that "The record of the Ameritech proceedings contains no comments with respect to Ameritech's provision of operator services." (EXH 1, FCC 97-298, ¶120)

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United States Court of Appeals for the Eighth Circuit

The Eighth Circuit Court determined that the FCC had exceeded its authority when it adopted pricing rules. It has relegated full authority back to the states over pricing for intrastate services. The other items reviewed by the Eighth Circuit Court do not impact this issue.

**FPSC'S INTERPRETATION OF SECTION 271 REQUIREMENTS**

In the FPSC's orders approving arbitration agreements, the FPSC did not interpret § 271 requirements for 911 and E911, directory assistance, or operator call completion nondiscriminatory access.

While the FPSC did not interpret § 271 in the arbitration agreements, Rule 25-4.073, F.A.C., requires 90% of all directory assistance calls to be answered within 30 seconds, if live operators, and requires 95% of all the calls to be answered within 15 seconds, if it is an automated system.

In addition, if emergency services are not currently handled by 911, Rule 25-4.073, F.A.C., requires 90% of all calls to be answered within 20 seconds after zero only is dialed. Otherwise, the rule requires 90% of all calls to be answered within 30 seconds after zero only is dialed, if live operators, and within 15 seconds, if it is an automated system. Both sets of data are reported to the FPSC staff on a quarterly basis.

**SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE**

Staff will review all the information relevant to this issue to determine if BST is providing the three items listed in this issue to ALECs in the same manner as it is providing them to BST. For example, the service provided to the new entrants' customers should be functionally equivalent to the service provided to BST's customers.

In terms of 911/E911, nondiscriminatory access refers to access that is at least equal to the access that BST itself receives. As the FCC stated in the Ameritech Order, BST must "do what is necessary to ensure that its 911 database is populated as accurately, and that errors are detected as quickly, for entries submitted by competing carriers as it is for its own entries." (EXH 1, FCC 97-298, ¶256-279) That is, the updates should be timely and accurate.

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In terms of directory assistance, nondiscriminatory access refers to access that is at least equal to the access that BST itself receives. As the FCC stated, "if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the telephone service provider for the customer whose directory listing is requested." (EXH 1, FCC 96-333, ¶135) That is, all ALEC customers should be able to use directory assistance and receive the same information as BST customers.

In terms of operator services, nondiscriminatory access refers to access that is at least equal to the access that BST itself receives.

#### STAFF DISCUSSION OF POSITIONS

##### 911

BST appears to provide 911/E911 services to the ALECs in the same manner in which it provides the services to BST. BST updates the 911/E911 database daily for both BST's and the ALECs' customers. (EXH 32, p.53)

Two intervenors, WorldCom and ICI, voiced objections to BST's provision of access to 911/E911 services. WorldCom stated that the design requirements BST imposes on ALECs are unnecessary, burdensome, and as a result, more costly than necessary. (TR 3412-3418) BST's response is that there is no difference between the 911/E911 design requirements for BST or the ALECs in regards to design requirements listed in the SGAT. (TR 833) When WorldCom was questioned for specific examples of why it thought the design requirements were extreme, WorldCom stated that it had merely used 911's design requirements to illustrate the potential hardships faced by an entrant. For example, an ILEC may have built configurations, over the years, which were customized and are not necessarily friendly to entrants from a design perspective. (EXH 116, pp.30-32)

The 911 design requirements are clearly defined in the SGAT in Section 7.A.4. All of the ALECs, ILECs, and BST are held to these same requirements. (TR 3404) Staff does not believe that WorldCom's argument demonstrates that BST is not providing nondiscriminatory access to 911. By virtue of the fact that BST has been providing 911 service for close to 20 years, it is hardly surprising that new entrants will need to expend company

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resources to achieve a level of infrastructure that is necessary to provide the same services.

ICI argues it does not have nondiscriminatory access to 911 because in any case where ICI would be ordering UNEs, 911 would be required. Since BST has been unable to deliver certain UNEs, 911 services are not being provided with those UNEs. (TR 2386)

ICI does not claim that BST provides discriminatory access to 911 services, but rather that since ICI cannot get BST to provide a certain UNE, then it cannot get 911 in conjunction with that UNE. While ICI should be able to receive all UNEs that it requests from BST, staff does not believe that BST's lack of provision of one UNE automatically impacts all of the checklist items.

Staff believes that based on the record of this proceeding, that at this time, it appears that BST has met the requirements of this issue regarding 911.

#### Directory Assistance

BST appears to discriminate in its provision of directory assistance services to the ALECs. Below is a discussion of issues that pertain to directory assistance which were disclosed in this proceeding.

Four intervenors voiced objections to BST's provision of access to directory assistance services. The objections ranged from what BST was, or was not, providing the ALECs, to the rates set in the SGAT.

ICI argues that it does not have nondiscriminatory access to directory assistance services because in any case where ICI would be ordering UNEs, directory assistance would be required. Since BST has been unable to deliver certain UNEs, DA services are not being provided with those UNEs (e.g., frame relay). (TR 2387) ICI does not claim that BST provides discriminatory access to directory assistance services, but rather that since ICI cannot get BST to provide a certain UNE, then it cannot get directory assistance in conjunction with that UNE. While ICI should be able to receive all UNEs that it requests from BST, staff does not believe that BST's lack of provision of one UNE automatically impacts all of the checklist items.

AT&T/MCI argue that the rates used by BST for directory assistance do not comply with § 252(d)(1)(A)(i) and § 252(d)(1)(A)(ii) because the arbitrated rates are not based on

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cost and because they are interim. AT&T/MCI contend that since the rates were determined using the Hatfield model or tariffed rates, they cannot be in compliance with the requirements of § 252. (Wood TR 1958)

The rates in question are rates set by the FPSC while setting the AT&T interconnection agreement with BST. These rates were interim rates that the FPSC set due to lack of information necessary to set a proper, cost-based rate. While the Eighth Circuit Court has ruled that the States have full authority over intrastate rates, the rates must still comply with § 252(d)(1)(A)(I), which requires that the rates be based on cost.

Staff believes that the rates set by BST for directory assistance do not comply with § 252(d)(1)(A)(I) since it contains interim and tariff rates that are not cost based. Since this issue is being addressed in Issue 3, staff does will not recommend that BST fail this issue for this violation.

AT&T states that BST has failed to provide usage detail for chargeable items such as directory assistance calls. AT&T alleges that BST will use manually calculated bills, or accumulate the billing until the billing system is working. AT&T says that BST's method of manually calculating the bill or accumulating the billing until the computerized billing system is working, is not providing AT&T with the same directory assistance service as BST provides to itself. (Hamman TR 2688)

BST replies that usage detail should not apply to directory assistance, which is simply a per use charge. BST is not aware of any problem where BST provides directory assistance to an ALEC that has its own switch. For those ALECs which resell BST's directory assistance service, the bills are produced in exactly the same manner for BST as for the ALEC. BST further states that it is not aware that AT&T, anywhere and certainly not in Florida, is providing directory assistance services over its own switches. (EXH 33, pp.67-68)

As detailed in the SGAT, there are three different directory assistance services that BST offers to ALECs and ILECs. The three services are Directory Assistance Access Service (DAAS), Direct Access Directory Assistance Service (DADAS), and Directory Assistance Database Service (DADS).

DAAS is a service provided by BST when the ALEC provides its own switch, but not its own directory assistance platform or directory assistance operators, so that all directory assistance calls would be answered by BST directory assistance operators.

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In this instance, BST bills the ALEC a per message charge. (EXH 39, p.1)

DADAS is another service provided by BST when an ALEC or ILEC provides its own switch, its own directory assistance platform, and its own directory assistance operators, but not its own directory assistance database of directory listings. Such a company may choose to acquire DADAS so that its operators would be connected "on-line" to BST's directory assistance database. In this instance, BST bills the ALEC for on-line access to the database. (EXH 39, p.1)

DADS is the service provided by BST when an ALEC or ILEC provides its own switch, its own directory assistance platform, and its own directory assistance operators, but not its own directory assistance database of directory listings. Such a company may choose to acquire DADS instead of DADAS. DADS is a service whereby rather than the ALEC's operators having "on-line" access to BST's database, the ALEC has bought its own database from BST. This database is periodically updated by BST. In this instance, BST bills the ALEC for updates to its database when they are requested. (EXH 39, p.2)

The bills for directory assistance would be on a per call basis and not dependent on the duration of the call. BST stated that "when an ALEC's end user customer dials directory assistance, the billing information (that is, identification of calling customer, time of day, etc.) would be recorded by the BST switch and later transferred to the Daily Usage File which would in turn be periodically sent to the appropriate ALEC according to the transfer cycle requested by the ALEC." (EXH 39, p.2)

After reviewing all of the information provided in this hearing regarding billing usage for directory assistance, it appears that the billing usage for directory assistance is nondiscriminatory.

AT&T also contends that BST will not provide AT&T with selective routing for directory assistance, and further, that AT&T has requested BST to use code conversion to convert 411 to another number prior to sending it to AT&T, instead of using the line class code to direct the call. (Hamman TR 2666)

BST replies that it is not aware of any requests by AT&T for selective routing in Florida, but BST stands ready to provide it to any and all who request. (Milner TR 830) BST also stated that line class code was the method discussed in the interconnection agreement and if AT&T wants to use code conversion, then it would

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be appropriate for AT&T to submit a Bona Fide Request (BFR). (Milner TR 829) AT&T said that it has not yet requested selective routing in Florida due to all of the problems that BST has run into trying to provide selective routing to AT&T in Georgia. (TR 2753; EXH 97)

Staff believes that since BST can selectively route its own calls, then BST should provide selective routing to whichever ALEC or ILEC requests it. BST has not demonstrated that it can provide selective routing, and therefore this is a discriminatory practice.

AT&T also complains about BST branding its DA services as "BST," but not providing AT&T the opportunity to do the same. (TR 2669) AT&T further stated that AT&T has not ordered branding in Florida because of all the problems that BST has faced in Georgia. (EXH 94, pp.163-164)

BST replies that AT&T can order unbranded or special branded service if they so choose. (Scheye TR 501) While BST states this, it does not appear that BST is currently able to provide this service. While it is obvious that BST and AT&T are working together to iron out the problems associated with branding, as well as selective routing, it does not appear that BST is in a position to provide these services at this time. (EXH 97; EXH 98)

MCI stated that it does not have access to all of the information in the directory assistance database that BST has access to. MCI cannot get the numbers from an ALEC or an ILEC unless that ALEC or ILEC gives permission to BST. Therefore, while BST can get the ILEC's customers' information, MCI cannot. (EXH 113, pp.98-99)

BST states that it cannot give out an ALEC's or ILEC's customer information unless the ALEC or ILEC has given BST permission to do so. BST says that MCI and the ALEC or ILEC should make an agreement with each other. (Scheye TR 592)

In the Second Report and Order, the FCC declared that LECs must provide on a nondiscriminatory basis access to direct assistance and direct listings. It further stated, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the telephone service provider for the customer whose directory listing is requested. Staff would agree with the FCC's interpretation of the nondiscriminatory requirements for the provision of directory listings as an unbundled element and

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believes BST's refusal to provide access to all as a violation of this nondiscriminatory provision. BST essentially has control to some extent as to the circumstances to which carriers place directory listings in their database. Staff believes the agreements that BST has entered into has limited the direct listings available to all customers to only the listings that LECs, either ILECs or ALECs, want its competitors to receive. Staff doesn't believe that is appropriate and violates the nondiscriminatory provisions of the Act.

#### Operator Call Completion

BST appears to provide operator call completion services to the ALECs in the same manner in which it provides the services to BST.

Two intervenors, ICI and AT&T/MCI, voiced objections to BST's provision of access to operator call completion services. ICI argues that it does not have nondiscriminatory access to operator call completion services because in any case where ICI would be ordering UNEs, it would want also to order operator call completion services. Since BST has been unable to deliver certain UNEs, operator call completion services are not being provided with those UNEs. AT&T/MCI argue that the rates charged by BST for operator call completion services are not in compliance with § 252.

ICI does not claim that BST provides discriminatory access to operator call completion services, but rather that since ICI cannot get BST to provide a certain UNE, then it cannot get operator call completion services in conjunction with that UNE. While ICI should be able to receive all UNEs that it requests from BST, staff does not believe that BST's lack of provision of one UNE automatically impacts all of the checklist items. (EXH 79, p.270)

AT&T/MCI argue that the rates used by BST for operator call completion services do not comply with § 252(d)(1)(A)(I) and § 252(d)(1)(A)(ii) because the arbitrated rates are not based on cost and because they are interim. AT&T/MCI contend that since the rates were determined using the Hatfield model or tariffed rates, they cannot be in compliance with the requirements of § 252. (Wood TR 1958)

The rates in question are rates set by the FPSC while setting the AT&T interconnection agreement with BST. These rates were interim rates that the FPSC set due to lack of information necessary to set a proper, cost-based rate. While the Eighth

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Circuit Court has ruled that the States have full authority over intrastate rates, the rates must still comply with § 252(d)(1)(A)(I) which requires that the rates be based on cost.

Staff believes that the rates set by BST for operator call completion services do not comply with § 252(d)(1)(A)(I), and therefore, BST has not satisfied its requirement under § 251(c)(2)(D). However, since all rates for UNEs will be dealt with in Issue 3, staff believes that BST has met the requirements of this issue regarding operator call completion services.

#### SUMMARY

##### 911

As of June 1, 1997, BST had 88 trunks in service connecting at least five ALECs with BellSouth E911 arrangements in Florida. BST updates the 911/E911 database daily, and this update includes BST's customers, as well as all ALECs' and ILECs' customers. BST appears to provide 911/E911 services to the ALECs in the same manner in which it provides the services to BST. BST updates the 911/E911 database daily for both BST's and the ALECs' customers.

The two objections from the intervenors were successfully refuted by BST. Staff believes that based on the record of this proceeding, it appears that BST has met the requirements of this issue regarding 911.

##### Directory Assistance

As of June 1, 1997, there were 156 directory assistance trunks in place serving at least three ALECs in Florida; however, BST appears to discriminate in its provision of directory assistance services to the ALECs. (TR 68)

While some of the objections raised by the intervenors did not constitute discrimination by BST, AT&T/MCI's contention regarding the rates, and MCI's contention regarding the access to the database demonstrated discrimination by BST in the provision of directory assistance services. Staff believes that with all of the information obtained during this proceeding, that at this time, it appears that BST has not met the requirements of providing nondiscriminatory access to directory listings.

##### Operator Call Completion

As of June 26, 1997, there were 31 operator call completion trunks in place serving at least 3 ALECs in Florida.

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While the ICI objection was successfully refuted by BST, AT&T/MCI's contention regarding the rates demonstrated discrimination by BST in the provision of operator call completion services. However, since the rates will be dealt with in Issue 3, staff believes that based on the record in this proceeding, that at this time, it appears that BST has met the requirements of this issue regarding operator call completion services.

Due to the fact that BST has failed to provide nondiscriminatory access to directory assistance services as discussed above, staff recommends that the BST fail this checklist item.